

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PENNSYLVANIA 19103-2029

In the Matter of:

Tri-Port Terminals, Inc.  
1324 McCloud Road  
Chesapeake, Virginia 23324,

Respondent.

and

Tri-Port Terminals  
1324 McCloud Road  
Chesapeake, Virginia 23324,

Facility.

U.S. EPA Docket No:  
EPCRA-03-2012-0098

Proceedings Pursuant to Sections 311,  
312 and 325 of the Emergency Planning  
and Community Right-to-Know Act, 42  
U.S.C. §§ 11021, 11022 and 11045

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), as amended, 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (collectively, "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and § 22.15(b) (2), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

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### **FINDINGS OF FACT**

1. Tri-Port Terminals, Inc. ("Respondent") is a corporation organized in the Commonwealth of Virginia with its principal place of business located at 1324 McCloud Road, in Chesapeake, Virginia.

2. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 370.2.

3. Respondent is the owner and operator of a merchant storage facility that receives and stores materials from ocean-based vessels for further distribution.

4. Respondent's merchant storage facility is a "Facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.2.

5. At all times relevant to this CA/FO, Respondent owned and operated the Facility, within the meaning of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022.

6. On May 27, 2010, EPA conducted an inspection at the Facility to determine whether the facility had complied with Section 103 of CERCLA and Sections 302-312 of EPCRA.

7. The state emergency response commission ("SERC") for the Facility is, and has been at all times relevant to this CA/FO, the Virginia Department of Environmental Quality, Virginia Emergency Response Council, 629 East Main Street, in Richmond, Virginia.

8. The local emergency planning committee ("LEPC") for the Facility is, and has been at all times relevant to this CA/FO, the Chesapeake Local Emergency Planning Committee, 304 Albemarle Drive, in Chesapeake, Virginia.

9. The local fire department for the Facility is, and has been at all times relevant to this CA/FO, the Chesapeake Fire Department, located at 304 Albemarle Drive, Chesapeake, Virginia.

10. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. § 370.2, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance ("EHS")) in a quantity equal to or greater than its applicable minimum

threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.20, to submit either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

11. Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

12. Respondent is an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).

13. Respondent is required to have an MSDS at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

14. UAN Solution is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.2.

15. Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemical listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

16. Pursuant to 40 C.F.R. § 370.10, the MTL for UAN Solution is 10,000 pounds.

17. At any one time during calendar year 2007, Respondent had present at its Facility 98,110,000 pounds of UAN Solution.

18. At any one time during calendar year 2008, Respondent had present at its Facility 115,160,000 pounds of UAN Solution.

19. At any one time during calendar years 2007 and 2008, Respondent had present at the Facility UAN Solution in quantities exceeding the 10,000 pound MTL for UAN Solution.

**FINDINGS OF FACT RELATED TO THE  
ALLEGED VIOLATION OF SECTION 311 OF EPCRA – SERC**

20. Respondent was required to submit to the SERC either an MSDS for the UAN Solution or a list of hazardous chemicals identifying UAN Solution as being present at the Facility in quantities exceeding its MTL no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its MTL.

21. Respondent failed to submit to the SERC either an MSDS for UAN Solution or a list of hazardous chemicals identifying UAN Solution as present at the Facility in quantities exceeding its MTL, no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its MTL.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 311 OF EPCRA – SERC**

22. Respondent's failure to submit to the SERC either an MSDS for UAN Solution or a list of hazardous chemicals identifying UAN Solution as present at the Facility in quantities exceeding its MTL constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
ALLEGED VIOLATION OF SECTION 311 OF EPCRA – LEPC**

23. The preceding paragraphs are incorporated by reference.

24. Respondent was required to submit to the LEPC either an MSDS for the UAN Solution or a list of hazardous chemicals identifying UAN Solution as being present at the Facility in quantities exceeding its MTL no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its MTL.

25. Respondent failed to submit to the LEPC either an MSDS for the UAN Solution or a list of hazardous chemicals identifying the UAN Solution as present at the Facility in quantities exceeding its MTL no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its MTL.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 311 OF EPCRA – LEPC**

26. Respondent's failure to submit to the LEPC either an MSDS for the UAN Solution or a list of hazardous chemicals identifying the UAN Solution as present at the Facility in quantities exceeding its MTL constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE**  
**ALLEGED VIOLATION OF SECTION 311 OF EPCRA – LOCAL FIRE**  
**DEPARTMENT**

27. The preceding paragraphs are incorporated by reference.

28. Respondent was required to submit to the local fire department either an MSDS for the UAN Solution or a list of hazardous chemicals identifying the UAN Solution as being present at the Facility in quantities exceeding its MTL no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its respective MTL.

29. Respondent failed to submit to the local fire department either an MSDS for the UAN Solution or a list of hazardous chemicals identifying the UAN Solution as present at the Facility in quantities exceeding its respective MTL no later than three (3) months after the UAN Solution was present at the Facility in an amount equal to or greater than its MTL.

**CONCLUSION OF LAW RELATED TO THE**  
**ALLEGED VIOLATION OF SECTION 311 OF EPCRA – LOCAL FIRE**  
**DEPARTMENT**

30. Respondent's failure to submit to the local fire department either an MSDS for the UAN Solution or a list of hazardous chemicals identifying the UAN Solution as present at the Facility in quantities exceeding its MTL constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE**  
**ALLEGED VIOLATION OF SECTION 312 OF EPCRA**

31. The preceding paragraphs are incorporated by reference.

32. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. § 370.25, requires the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical in accordance with OSHA's Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ to submit on or before March 1, 1988, and by March 1<sup>st</sup> of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

**EPA'S CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007**

33. The preceding paragraphs are incorporated by reference.

34. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and the local fire department a Chemical Inventory Form identifying the UAN Solution as present at the Facility during calendar year 2007 in quantities greater than its respective MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

35. Respondent failed to submit to the SERC, LEPC, and local fire department by March 1, 2008, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2007 identifying the UAN Solution.

36. Respondent's failure to submit a complete and accurate Chemical Inventory Form for the Facility to the SERC, LEPC and local fire department by March 1, 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
ALLEGED VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008**

37. The preceding paragraphs are incorporated by reference.

38. By March 1, 2009, Respondent was required to submit to the SERC, LEPC, and the local fire department a Chemical Inventory Form identifying the UAN Solution as present at the Facility during calendar year 2008 in a quantity greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

39. Respondent failed to submit to the SERC, LEPC, and the local fire department by March 1, 2009, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2008 identifying the UAN Solution.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008**

40. Respondent's failure to submit to the SERC, LEPC, and the local fire department by March 1, 2009, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**CIVIL PENALTY**

41. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the alleged violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, set forth above, in the amount of **\$10,002**.

**PAYMENT TERMS**

42. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, the Respondent must pay the civil penalty, totaling **\$10,002**, no later than thirty (30) days after the Effective Date as set forth in the Final Order (the "final due date"). Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Heather Russell 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Heather Russell 513-487-2044

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

43. The Respondent shall submit a copy of the check, or verification of wire transfer or ACH to the following persons:



Lydia Guy (3RC00)  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Joyce Howell (3RC30)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

44. The civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

46. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid no later than thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

47. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

48. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

49. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties,

plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### **GENERAL PROVISIONS**

50. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

51. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CA/FO.

52. Except as set forth in paragraph 50 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

53. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal this Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

54. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, successors and assigned. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind the party to the terms and conditions of the Consent Agreement and accompanying Final Order.

55. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, or any regulations promulgated thereunder.

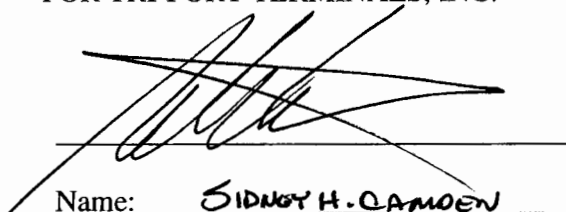
56. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanction available by virtue of Respondent's violation of this agreement, other statutes and regulations, or any other applicable provision of law.

57. Each party to this action shall bear its own costs and attorney's fees.

In re Tri-Port Terminals, Inc.

U.S. EPA Docket No. EPCRA-03-2012-0098

FOR TRI-PORT TERMINALS, INC.

A large, stylized handwritten signature in black ink, appearing to read 'Sidney H. Camden', is written over a horizontal line.

Name: SIDNEY H. CAMDEN

Title: VP/GM Tri-Port

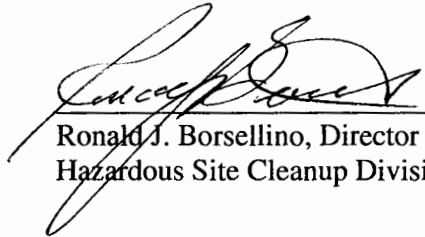
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DATE

In re Tri-Port Terminals, Inc.

U.S. EPA Docket No. EPCRA-03-2012-0098

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

  
\_\_\_\_\_  
DATE

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
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**In the Matter of:**

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**U.S. EPA Docket No:  
EPCRA-03-2012-0098**

**Proceedings Pursuant to Sections 312 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11021, 11022 and 11045**

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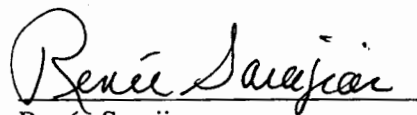
**FINAL ORDER**

Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), as amended, 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

This Final Order shall become effective upon the date of its filing with the Regional  
Hearing Clerk.

Date: 3/30/12

A handwritten signature in cursive script, reading "Renée Sarajian", written over a horizontal line.

Renée Sarajian  
Regional Judicial Officer  
EPA, Region III